IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 43

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL.,
PETITIONERS,

Vs.

LEDBETTER ERECTION COMPANY, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA.

Jack Crenshaw,
Files Crenshaw,
804 First National Bank Bldg.,
Montgomery, Alabama.

Cates & Huddleston,
810 First National Bank Bldg.,
Montgomery, Alabama.

Counsel for
LEDBETTER ERECTION COMPANY, INC.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 736

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL.,
PETITIONERS,

Vs.

LEDBETTER ERECTION COMPANY, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA.

RESPONDENTS BRIEF IN ANSWER TO THE BRIEF AMICUS CURIAE

We were surprised to receive a brief amicus curiae on behalf of the National Labor Relations Board. This litigation was begun eighteen months ago and is still pending in the Courts of Alabama. No petition for intervention was filed by the National Labor Relations Board in either the lower court or the Supreme Court of Alabama and no reason is advanced why the Board cannot now intervene in the proceedings there.

It is stated in the brief amicus curiae that by seeking injunctive relief to prevent irreparable injury to itself, the Respondent aborted the entire statutory scheme. The Board seems particularly interested in maintaining the integrity of the administrative process, with no concern over the necessity of accommodating this assertion of new Federal authority with the functions of the individual state to protect its residents from irreparable injury by unlawful acts. As we see it, respect for our Federal system requires that the integrity of the administrative processes be subordinated to the pre-existing State authority.

The statement contained in the brief amicus curiae makes no reference to the charge in the bill of complaint that the acts were in violation of State law. It makes no reference to the Petitioners' original answer denying that interstate commerce was affected; and assumes that on final decree the State court will determine that interstate commerce is affected.

The sole interest of the Board is the integrity of the administrative processes vested in the Board. It is essential to point out that the pre-existing State authority is in no way derogatory of the power of the Board or its administrative processes, but on the other hand is and can be only complementary and supplementary to that administrative power. In this respect the case is entirely different from the cases arising out of an unfair labor practice by an employer. As pointed out in the brief amicus curiae, if there is a secondary boycott the appropriate officer of the Board is required to petition a Federal District Court for the identical relief here granted.

If, on the other hand, the interstate commerce is not affected or there is no violation of Section 8 (b) (4) of the Labor Management Relations Act, then the State court would admittedly have the right to grant the relief in question. Under no circumstances therefore would there be any conflict between the relief granted by the State Court and the administrative processes of the Board.

The Solicitor General points out that the Board acts in the public interest and not in vindication of purely private rights. The fundamental question in this case is whether the administrative authority vested in the Board supersedes entirely the State authority to grant appropriate relief in vindication of these private rights. We submit that under the decisions of this Court such a result should not be reached; certainly where, as here, the jurisdiction of the National Labor Relations Board has not yet been determined and the State Court limited its holding to situations where the Board would not accept jurisdiction, or where the remedy before the Board was inadequate.

It is recognized in the brief amicus curiae that the decision should not be reviewed unless it is a final judgment within the meaning of 28 U. S. C. 1257. The ingenious argument is made that the question of jurisdiction of the State court to enjoin picketing for an unlawful purpose is reviewable now, or it is not reviewable at all. The reason for this statement is that the question will become moot. No reason is advanced why it would become any more moot by awaiting the final judgment required by 28 U. S. C. 1257. It certainly would become no more moot than the temporary injunction involved in *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. ed 855. To postpone review until the final decree is rendered would in no way make the review become illusory. If on final decree the highest court of the State of Alabama determined that the State court had no jurisdiction, there would be nothing for this Court to review. If, on the other hand, on final decree the highest Court of the State of Alabama determined that the State court did have jurisdiction, there would be the same Federal question which Petitioner now seeks to raise. There has been no conclusive adjudication of a matter distinct and severable from the litigation; for the question of jurisdiction is not severable and there has been no final adjudication by the highest Court of the State of Alabama on the question.

We therefore respectfully submit that under the cases of *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. ed

855; *Gibbons v. Ogden*, 6 Wheat 448, 5 L. ed 302, *Moses v. Mayor, Aldermen & Common Council of the City of Mobile*, 15 Wall. 387, 21 L. ed 176, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Jack Crenshaw,
Files Crenshaw,
804 First National Bank Bldg.,
Montgomery, Alabama.

Aubrey M. Cates, Jr.,
John Huddleston,
810 First National Bank Bldg.,
Montgomery, Alabama.

Counsel for Respondent